

APR 21 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CATALINA ALTAMIRANO
HERNANDEZ,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-70114

Agency No. A92-129-285

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted April 13, 2006**

Before: SILVERMAN, McKEOWN, and PAEZ, Circuit Judges.

Catalina Altamirano Hernandez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") decision dismissing her

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

appeal from an immigration judge's decision concluding that she was removable on the basis of an aggravated felony conviction. We have jurisdiction under 8 U.S.C. § 1252. We review legal questions de novo, *Castillo-Perez v. INS*, 212 F.3d 518, 523 (9th Cir. 2000), and deny the petition for review.

The BIA properly determined that a conviction for possession of heroin for sale under Cal. Health & Safety Code § 11351 is an aggravated felony in that it is punishable as a felony under federal law. *See Cazarez-Gutierrez v. Ashcroft*, 382 F.3d 905, 912 (9th Cir. 2004) (a state drug offense is an aggravated felony for immigration purposes only if it would be punishable as a felony under federal drug laws or if the crime contains a trafficking element). Hernandez's contention that she was eligible for relief from removal because her conviction was expunged under Cal. Penal Code § 1203.4 is unavailing because she was not convicted of simple possession, *see Dillingham v. INS*, 267 F.3d 996, 1005-07 (9th Cir. 2001) (an alien may not be deported where conviction for first-time simple possession of narcotics was expunged under state rehabilitative laws), and a conviction expunged under Section 1203.4 remains a conviction for purposes of federal law, *see Ramirez-Castro v. INS*, 287 F.3d 1172, 1175-76 (9th Cir. 2002).

All remaining contentions are unpersuasive.

PETITION FOR REVIEW DENIED.